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| VAN PELT, YI & JAMES LLP<br>10050 N. FOOTHILL BLVD #200<br>CUPERTINO, CA 95014 |             |                      | EXAMINER<br>TRUONG, THANHNGA B |                        |
|  |             |                      | ART UNIT<br>2435               | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/824,273

**Applicant(s)**

HALL, ARON

**Examiner**

Thanhnga B. Truong

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

1. This action is responsive to the communication filed on June 27, 2008. Claims 1-27 are pending. Claim 28 is canceled by the applicant. At this time, claims 1-27 are still rejected.

### *Response to Arguments*

2. Applicant's arguments filed June 27, 2008 have been fully considered, but they are not persuasive.

As mentioned in the previous office action, although claim 22 has "tangible" language, it does not prove to be statutory, since this term "tangible" does not support anywhere in the specification. Therefore, claim 22 is still found non-statutory. In addition, the specification still recites a propagated signal (see paragraph [0012] of page 4 of specification), wherein the computer program product could be embodied and transferred via a propagated signal. Therefore, the 101 rejection is still maintained.

Applicant further argues:

Liang does not teach billing servers and the combination of teaching between Liang and Colson does not teach the limitation of claim 1.

Examiner respectfully disagrees with the applicant and still maintains that:

Liang's management server can configure to be a billing server, since there is no clear explanation and/or description of claim limitation to distinguish the billing server from other server. However, Colson clearly teaches the billing server in Figure 3 and more detail on page 1, paragraph [0008] and [0018] of Colson.. In addition, Liang further teaches a system and method for effectively managing damage caused by a computer virus epidemic in a network environment by effectively and rapidly distributing antivirus protection and cure measures within the network so as to optimally reduce the level of damage during the virus epidemic (emphasis added) (column 2, lines 28-33 of Liang). Furthermore, Liang teaches all communications conducted in the network system according to a preferred embodiment of the invention between different computers or machines are secured by a secured communications channel (SCC) (column 7, lines 1-4 of Liang). Therefore, Liang, alone, could anticipate the limitation of claim 1.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as mentioned above, the combination of teaching between Liang and Colson teaches the claimed subject matter and the combination is proper.

The fact that Examiner may not have specifically responded to any particular arguments made by Applicant and Applicant's Representative, should not be construed as indicating Examiner's agreement therewith.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 10-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

a. *Referring to claim 22:*

Claim 22 recites "a computer program embodied in a tangible computer-readable medium, and comprising computer instructions for: quantifying damages avoided by one or more blocked attacks; and calculating security protection consumption during a period of time." The claim is clearly a software program and it is non-statutory as not being tangibly embodied in a manner so as to be executable. Furthermore, applicant has pointed out in the specification (paragraph [0012] of page 4) that the computer readable medium may comprise a disk, a device, **and/or a propagated signal**, which clearly including intangible media such as signals, carrier waves, transmissions, optical waves, transmission media or other media incapable of

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being touched or perceived absent the tangible medium through which they are conveyed. Therefore, claim 22 recites a non-statutory subject matter.

Claims 23-27 are depended on claim 22, thus they are rejected with the same rationale applied against claim 22 above.

b. Referring to claim 10:

i. This claim has limitations that is similar to those of claim 22, thus it is rejected with the same rationale applied against claim 22 above.

Claims 11-15 are depended on claim 10, thus they are rejected with the same rationale applied against claim 10 above.

c. Referring to claim 16:

i. This claim has limitations that is similar to those of claim 22, thus it is rejected with the same rationale applied against claim 22 above.

Claims 17-21 are depended on claim 16, thus they are rejected with the same rationale applied against claim 16 above.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liang (US 7,062,553 B2), and further in view of Colson et al (US 2003/0128229).

a. Referring to claim 1:

i. Liang teaches a network security apparatus comprising:

(1) a billing server configured to calculate security protection consumption during a period of time by quantifying damages avoided by one or more blocked attacks (see abstract; column 2, lines 34-44; column 11, lines 7-20 of Liang).

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ii. Although Liang teach the management server as shown in Figure 1, which could consider billing server. However, Colson clearly teaches the billing server in Figure 3 and more detail on page 1, paragraph [0008] and [0018] of Colson.

iii. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

(1) modified the invention of Liang with the teaching of Colson to antivirus control in a network system and, more particularly, damage control against virus outbreak in a network environment with a plurality of device nodes under malicious code attack (column 1, lines 15-18 of Liang).

iv. The ordinary skilled person would have been motivated to:

(1) modified the invention of Liang with the teaching of Colson for effectively managing damage caused by a computer virus epidemic in a network environment by effectively and rapidly distributing antivirus protection and cure measures within the network so as to optimally reduce the level of damage during the virus epidemic (column 2, lines 29-33 of Liang).

b. Referring to claim 2:

i. Liang further teaches:

(1) wherein calculating security protection consumption further includes determining whether a blocked attack would have exploited a network vulnerability (**column 9, lines 1-11 of Liang**).

c. Referring to claim 3:

i. Liang further teaches:

(1) wherein determining whether a blocked attack would have exploited network vulnerability includes replaying the attack on an internal network (e.g., LAN) (**column 9, lines 1-11 of Liang**).

d. Referring to claim 4:

i. Liang further teaches:

(1) further comprising a scanner configured to scan one or more devices for vulnerabilities **(column 10, lines 22-31 and 51-63 of Liang)**.

e. Referring to claim 5:

i. Liang further teaches:

(1) wherein the scanner is configured to quantify the risk of one or more devices **(column 11, lines 7-20 of Liang)**.

f. Referring to claim 6:

i. Liang further teaches:

(1) wherein the scanner is located within a customer network **(column 10, lines 51-63 of Liang)**.

g. Referring to claim 7:

i. Liang further teaches:

(1) further comprising an intrusion suppression module configured to block attacks **(column 2, lines 40-44; column 7, line 66 through column 8, line 2 of Liang)**.

h. Referring to claim 8:

i. Liang further teaches:

(1) wherein the intrusion suppression module is configured to maintain a list of attacks sustained and blocked during a period of time **(column 6, lines 56-67; column 2, lines 34-44; column 11, lines 7-20 of Liang)**.

i. Referring to claim 9:

i. Liang further teaches:

1) wherein the intrusion suppression module is located outside (e.g., remote location) a customer network **(column 9, lines 5-7 of Liang)**.

j. Referring to claims 10-15:

i. These claims consist a network security method to implement from the network security apparatus of claim 1, thus they are rejected with the same rationale applied against claims 1-9 above.

k. Referring to claims 16-21:

i. These claims have limitations that is similar to those of claims 1-9, thus they are rejected with the same rationale applied against claims 1-9 above.

l. Referring to claims 22-27:

i. These claims consist a computer program stored on a computer-readable medium to implement by the network security method of claim 10 from the network security apparatus of claim 1, thus they are rejected with the same rationale applied against claims 1-9 above.

**Conclusion**

7. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhnga (Tanya) Truong whose telephone number is 571-272-3858.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached at 571-272-3859. The fax and phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

/Thanhnga B. Truong/

Primary Examiner, Art Unit 2435

TBT

November 15, 2008